IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 65 of 2001.

Date of Decision: 24-7-2007.

Babu Ram and another. Petitioners.

Versus

State of H.P. Respondent.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]?

For the petitioners : Mrs. Jyotika, Advocate.

For the respondent : : Mr. M.S. Chandel, Advocate General with Mr. V. K. Verma, Addl. Advocate General.

Surinder Singh, J (oral)

The learned Sessions Judge affirmed the judgment of conviction and sentence of the trial Court under Sections 325 and 323 of the Indian Penal Code which has been assailed in this revision petition.

According to the prosecution case, complainant Lekh Ram (PW2) while returning to his home was laid by the petitioners. Boru Ram petitioner is alleged to have gripped him by both the arms and petitioner Babu Ram gave danda blow on his head and other parts of the body. Lekh Ram injured was pushed to the ground. He had sustained many injuries and fracture of his left fore-arm. During beatings, Roop Ram (PW4) and Puran Chand intervened and rescued him from the petitioner. FIR Exhibit PW5/A was lodged in the Police Station.

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[1] Whether reporters of the Local papers are allowed to see the judgment?

Police had visited the spot, prepared the site plan Exhibit PW5/B. The injured was medically examined by Dr. Deepak Tanwar (PW3). With respect to injury No.1, victim was referred for X-ray. Sat Parkash (PW1) Radiographer took the x-ray Exhibit PW1/A. Dr. Deepak Tanwar (PW3) opined that the x-ray had shown fracture. The statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure and on completion of challan, it was presented in the Court for trial.

Finding a prima facie case against the petitioners herein, they were charge-sheeted under Section 325/323 read with Section 34 of the Indian Penal Code. They pleaded not guilty and claimed trial.

The prosecution examined Sat Parkash (PW1), Lekh Ram (PW2) injured, Dr. Deepak Tanwar (PW3), Roop Ram (PW4), Sukh Ram (PW5) the investigating officer. The petitioners were examined under Section 313 of the Code of Criminal Procedure. They have denied the incident and alleged false implication in the case. They had examined DW1 Sant Ram.

Learned trial Court upon hearing the parties and going through the evidence on record, held the petitioners guilty of the offences aforesaid and accordingly they were convicted.

After hearing them on the point of sentence, each of them was sentenced to under go rigorous imprisonment for a term of three months and to pay a fine of rupees 500/- under Section 323 read with Section 34, I.P.C. and also rigorous imprisonment for a term of six months and to pay a fine of rupees 500/- each for the offence punishable under Section 325 read with Section 25 of the Indian Penal Code. Both the sentences were ordered to run concurrently. In default of payment of fine, each of the petitioners were ordered to under go simple imprisonment for a period of three months.

Feeling aggrieved and dis-satisfied by the impugned judgment of conviction and sentence, the petitioners filed the criminal appeal

aforesaid before the learned Sessions Judge. On re-appraisal of the evidence, learned Sessions Judge did not find any infirmity or irregularity in the judgment passed by the learned trial Magistrate accordingly, the appeal was dismissed.

Again the petitioners have assailed the concurrent findings of the trial Court in this revision on the ground that both the courts below have based their findings on conjectures and surmises. The prosecution had miserably failed to prove their case and the courts below have drawn wrong inferences beyond the evidence on record and the law was not properly applied.

The petition was admitted for hearing on 22.5.2001. Vide order dated 25.5.2007, the report of the Probation Officer was also called for which has been received and nothing adverse was reported against the petitioners.

I have heard Ms. Jyotika, learned counsel for the petitioners and Shri J.S. Verma, learned Additional Advocate General for the respondent.

Ms. Jyotika has vehemently argued that both the learned courts below have mis-applied the law, which has resulted into the miscarriage of justice. She had led me through the statements of the witnesses and ventilated that this was not a case for conviction and in any case the conviction is upheld, since both the petitioners have no criminal record to their discredit, it is safe to give them the benefit of probation of offenders Act.

Contra, Shri J.S. Verma, while supporting the impugned judgment of conviction and sentence passed by the learned trial Court and affirmed by the appellate Court, has urged that there is no error in the conclusion arrived at by both the courts below and the petition deserves to be dismissed.

I have given my thoughtful considerations to the rival contentions and have gone through the evidence in order to find out if

there is misapplication of law and is any perversity in the appreciation of the evidence which has caused miscarriage of justice.

Lekh Raj injured (PW2) is an injured person. He has corroborated the prosecution version. Roop Ram (PW4) has successfully lent strength to his version so far as giving beatings by Babu Ram is concerned and another convict-petitioner Boru Ram has assisted him. The attack by the petitioners on the complainant and causing simple injuries to him stand proved beyond a shadow of reasonable doubt. Thus the conviction under Section 323 of the Indian Penal Code is upheld.

So far as offence under Section 325 of the Indian Penal Code is concerned, Lekh Ram (PW2) was medically examined by PW3 Dr. Deepak Tanwar. On clinical examination he found swelling with hoematoma with respect to injury no.1 on his left fore-arm as noted in Exhibit PW3/A. He referred the injured for X-ray. After the X-ray, PW1 Shri Sat Parkash Radiographer conducted his X-ray. Dr. Tanwar deposed in the court that this injury was grievous as opined by X-ray. The opinion of the radiologist was not taken. Dr. Deepak Tanwar (PW3) has not stated that he was expert in reading the X-rays or he fell within the category of an Expert as envisaged under Section 45 of the Indian Evidence Act. Though in cross-examination he has stated that such type of injury could also be caused by a fall. Even Danda (Ext. P1) which was alleged to have been recovered was not produced and got identified from Lekh Ram victim as stated by him in the cross-examination or the Doctor to elicit his opinion whether it could cause injury No.1 as alleged. Therefore, in my considered opinion, both the courts could not have acted upon on the opinion of PW3 to draw a conclusion that there was fracture of forearm, as it fell short of requisite standard as envisaged in law. Thus, a reasonable doubt has arisen as to the causing of fracture on account of beatings given by any of the petitioners in furtherance of their common intention. Thus the courts

below drew a wrong inference as far as offence under Section 325 of the Indian Penal Code is concerned which has caused material prejudice to the petitioners. Accordingly, I set aside the conviction and sentence recorded by the courts below under Section 325 of the Indian Penal Code, consequently, the petitioners are acquitted of offence under Section 325, I. P.C while I maintain the conviction of both the petitioners under Section 323 of the Indian Penal Code.

In the facts and circumstances of the case and also the fact that the alleged incident had taken place more then a decade ago and the petitioners have been facing the torture of the trial and other proceedings till today, interest of justice would be met in case the petitioners are given the benefit of the Probation of Offenders Act. Accordingly, I admonish both the petitioners under Section 323 of the Indian Penal Code by giving them the benefit of Section 3 of the Probation of Offenders Act while maintaining the fine of rupees 500/- as imposed by the trial Court and up-held by the appellate Court. The fine if not deposited, be deposited by each of the petitioners on or before 31st August, 2007. The sentence as imposed by the trial Court and upheld by the learned Sessions Judge stands modified.

The matter is accordingly disposed of.

(Surinder Singh)
Judge.

July 24, 2007.
(bm)